

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE UNITED PLANT AND
PRODUCTION WORKERS LOCAL 175 BENEFITS
FUND,

Plaintiff,

-against-

ADOPTION ORDER
18-CV-4269 (JS) (ARL)

MANA CONSTRUCTION GROUP, LTD., The Estate
of MARK FELDMAN, PATRYCIA FELDMAN,
as executor of the Estate of MARK FELDMAN,
NATALE F. CARDINO, and JOHN DOE COMPANY,

Defendants.

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APPEARANCES

For Plaintiff: Vito A. Palmieri, Esq.
Palmieri Castiglione & Associates, P.C.
250 Mineola Boulevard, 2nd Floor
Mineola, New York 11501

For Defendant Andrew S. Kent, Esq.
U.S. Specialty Wolff and Samson PC
Insurance Company One Boland Drive
West Orange, New Jersey 07052

For Defendant Mark Steven Gamell, Esq.
Fidelity and Deposit Catherine Breidenbach, Esq.
Company of Maryland Torre, Lentz, Gamell, Gary &
Rittmaster, LLP
100 Jericho Quadrangle, Suite 309
Jericho, New York 11753

SEYBERT, District Judge:

On March 25, 2020, Plaintiff Trustees of the United Plant and Production Workers Local 175 Benefits Fund ("Plaintiff") filed an Amended Complaint (ECF No. 25), adding U.S. Specialty Insurance Company ("USSIC") and Fidelity and Deposit Company of Maryland ("F&D") as defendants in this action, which alleges violations of

Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185, Sections 502(a)(3) and 515 of the Employee Retirement Income Security Act, as amended ("ERISA"), 29 U.S.C. §§ 132(a)(3) and 1145, and breach of contract. On May 7, 2021, this Court referred USSIC's and F&D's respective motions to dismiss the Amended Complaint for lack of personal jurisdiction due to improper service, among other grounds, to Magistrate Judge Arlene R. Lindsay. (See May 7, 2021 Elec. Order No. 2.)¹

On July 30, 2021, Judge Lindsay issued a Report and Recommendation ("R&R") recommending that the Court grant USSIC's and F&D's respective motions to dismiss, and deny Plaintiff's cross-motions for leave to extend its time to effectuate service, because Plaintiff failed to demonstrate good cause for its failure to timely serve USSIC or F&D. (R&R, ECF No. 51, at 8-10.) Judge Lindsay further recommended this Court decline to exercise its discretion to grant Plaintiff's cross-motions for an extension of time to serve. (Id. at 11-14 (applying the four-factor test used by district courts in the Second Circuit).)

The time to object has expired and no objections to the R&R have been filed. Upon careful review and consideration, the

¹ On May 3, 2021, Plaintiff filed a renewed motion for default judgment against defendant Mana Construction Group, LTD (ECF No. 49), and on May 7, 2021, this Court referred the motion to Judge Lindsay for a report and recommendation (See May 7, 2021 Elec. Order No. 1). That default judgment motion remains pending.

Court finds Judge Lindsay's R&R to be comprehensive, well-reasoned, and free of clear error. Accordingly, the Court ADOPTS the R&R (ECF No. 51) in its entirety, and USSIC's and F&D's respective motions to dismiss (ECF Nos. 39, 41) are GRANTED, and Plaintiff's cross-motions for an extension (ECF Nos. 43, 44) are DENIED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 13, 2021
Central Islip, New York